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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND
PROTECTION OF HUMAN RIGHTS

Fifty-first session

SUMMARY RECORD OF THE 26th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 23 August 1999, at 10 a.m.

Chairman: Mr. HATANO

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(ii) ARBITRARY DEPRIVATION OF NATIONALITY.

The meeting was called to order at 10 a.m.

FREEDOM OF MOVEMENT:

(a) THE RIGHT TO LEAVE ANY COUNTRY, INCLUDING ONE'S OWN, AND TO RETURN TO ONE'S OWN COUNTRY, AND THE RIGHT TO SEEK ASYLUM FROM PERSECUTION

(b) HUMAN RIGHTS AND POPULATION DISPLACEMENTS

(agenda item 10) (continued) (E/CN.4/Sub.2/1999/45; E/CN.4/Sub.2/1997/47; E/CN.4/Sub.2/1999/NGO/10 and 19)

1. Mr. ALI KHAN (World Federation of Trade Unions) said that political slogans in Pakistan led to the suspicion that the exodus of the entire minority community of Kashmiri Pandits had been a planned operation of ethnic cleansing. Thousands of armed terrorists and mercenaries were conducting a so-called jihad in Kashmir, seeking to replace a tolerant, democratic and secular society by the structures of bigotry. Both the Kashmiri Pandits and thousands of Muslim families had been forced to seek refuge in other parts of India.

2. In a recent statement, the exiled Government of Afghanistan had drawn attention to the similarity between Pakistan's plans for Kashmir and those it had implemented through the Taliban in Afghanistan, a country that had become a symbol of what political extremism and religious fundamentalism could do to a people. The displaced people of Kashmir were being denied their right to return home. More than 8,000 of them had died of exposure and physical and psychological disorders. Urgent action was needed to relieve their sufferings.

3. His organization was awaiting with interest the recommendations of the expert seminar on the right to freedom of movement, in particular with respect to a study on the legal standards applicable to different types of forced displacement and any lacunae in those standards, to be conducted in pursuance of Sub-Commission resolution 1998/27.

4. Ms. MADUAKOH (Office of the United Nations High Commissioner for Refugees (UNHCR)) said that the world would long remember the tragic images of hundreds of thousands of Kosovar Albanians, mainly women and children, fleeing to neighbouring countries. More haunting still were the images of those who had died at the hands of their persecutors.

5. UNHCR shared Ms. McDougall's conclusion in her final report on the situation of systematic rape, sexual slavery and slavery-like practices during periods of armed conflict (E/CN.4/Sub.2/1998/13) that systematic rape was increasingly being used as a weapon in armed conflict worldwide. In Sierra Leone, atrocities such as summary executions, amputations and the use of child soldiers would make the country's efforts at reconstruction that much more difficult.

6. A corollary of the right to seek and enjoy asylum was that people granted temporary sanctuary should be treated in a dignified and humane way.

Asylum policies in many receiving States imposed restrictions on refugees' freedom of movement and constraints on their ability to feed, shelter and otherwise support themselves and their families. UNHCR had witnessed a growing tendency in host countries to resort to arbitrary detention, limitations on family reunification, and curtailment of the right to work and of access to basic medical and educational facilities. The combined effect of those measures was a significant erosion of the quality of asylum.

7. Mr. Weissbrodt's working paper on the rights of non-citizens (E/CN.4/Sub.2/1999/7 and Add.1) and Ms. Hampson's comments on the same subject were of relevance to the current agenda item because refugees and other victims of forced displacement were a special category of non-citizen. Unlike other migrants, they had been forcibly uprooted from their homes and it was important to ensure that they enjoyed the right to an adequate standard of living, including adequate food, clothing and housing guaranteed under article 11 of the International Covenant on Economic, Social and Cultural Rights.

8. In that context, she welcomed Mr. Guissé's study of the right of access to drinking water supply and sanitation services (E/CN.4/Sub.2/1998/7) and Mr. Eide's updated study on the right to food (E/CN.4/Sub.2/1999/12). UNHCR would welcome and support a further Sub-Commission study on the rights and treatment of non-citizens, particularly as they applied to refugees and other victims of forced displacement.

9. Mr. EFTYCHIOU (Observer for Cyprus) said that the Geneva Convention relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention) was binding on all the High Contracting Parties under all circumstances. It was therefore shocking to note how little respect they paid to its provisions, particularly regarding the treatment of civilians in occupied territories.

10. The fact was that States initiating hostilities were not only fully aware of the implications of their actions for the human rights of civilians but in many cases actually targeted those rights in furtherance of their aspirations. The uprooting and expulsion of civilians from their ancestral homes, indiscriminate killings, and the colonization of occupied territories and the destruction of their cultural heritage were phenomena that recurred much too frequently to be incidental side-effects of conflicts.

11. In pursuing such policies, aggressor States breached international law by using force to promote national objectives, ignoring the Geneva Conventions and politically bolstering the results of their aggression in order to impose solutions that served the objectives for which they had embarked on the conflict. As long as aggressor States were allowed to get away with such conduct, they would feel no need to alter their policies, comply with international law or respect human rights. The time had come for the international community to take vigorous action to ensure that States honoured their contractual obligations.

12. In that connection, he welcomed Mr. Al-Khasawneh's final report on human rights and population transfer (E/CN.4/Sub.2/1997/23) and the Sub-Commission's intention to prepare a declaration on population transfer and the implantation

of settlers. Such initiatives and the decision to establish the International Criminal Court would go a long way towards strengthening the enforcement of international human rights instruments. He also hoped that the expert seminar provided for in Sub-Commission resolution 1998/27 would be held as soon as possible.

13. Mr. AL-DOURI (Observer for Iraq), speaking in exercise of the right of reply, said that the statement on behalf of Interfaith International had been delivered by an Iraqi hireling of States that were well known for their hostility to Iraq. The allegation that Iraq had been exporting milk, food and medical supplies had originated with the spokesman for the United States Department of State and had been circulated by the Kuwaiti authorities as part of their campaign against Iraq.

14. The cargo those authorities had seized, in an act of piracy, consisted of baby feeding bottles and talcum powder which had been rejected by Iraq because the products failed to meet international standards and had provoked dangerous allergic reactions. His Government had made an official statement challenging the United States and Kuwaiti authorities to allow the international media to disclose the nature of the cargo, so that the world could see for itself the kind of cheap tricks being played on Iraq.

15. With regard to the other allegations, the individual who had read the statement was one of the key providers of false information to the Commission's Special Rapporteur on the situation of human rights in Iraq, who included them in his reports without ascertaining their veracity. The true state of affairs had been set forth in his Government's responses to those reports.

16. The fact that Interfaith International had allowed a member of the so-called Iraqi opposition to make use of its consultative status with the Economic and Social Council to attack his country was a breach of the rules it was required to observe. His Government would request the Council's Committee on Non-Governmental Organizations to withdraw that status on the grounds of non-objectivity and non-impartiality.

SITUATION REGARDING THE PROMOTION, FULL REALIZATION AND PROTECTION OF THE RIGHTS OF CHILDREN AND YOUTH (agenda item 11) (E/CN.4/Sub.2/1999/35; E/CN.4/Sub.2/1999/NGO/5)

17. Ms. MELO CASTILLO (World Organization against Torture) said, with regard to the issue of a system of reparations for child victims of torture and other human rights violations, that the rules contained in the draft basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law, submitted to the Sub-Commission in 1996, needed to be tightened to take account of the special circumstances of child victims.

18. It was difficult to see how the right of access to national and international protection procedures could be enforced, for example, where a child victim had lost his or her family, had no family at all or was unaware of his or her rights. The Sub-Commission should recommend that States, in cooperation with non-governmental organizations (NGOs), launch a campaign to

set up procedures whereby child victims of abuses could have access to any tribunal without the need for representatives, and to inform children, especially street children and those belonging to the poorest sectors of the population, of appropriate national remedies, including access to courts and adequate compensation, restitution and rehabilitation.

19. Some United Nations treaties such as the Convention on the Rights of the Child had no individual complaint mechanism. There was nothing, however, in the rules of procedure of the Human Rights Committee or in the Optional Protocol to the International Covenant on Civil and Political Rights to prevent a child from submitting an individual complaint; children were, however, unlikely to be aware of the possibility. The Sub-Commission should launch a campaign to encourage children to use such mechanisms, including the publication of a document explaining all international procedures available to children in plain language and encouragement to States and NGOs to train children, parents and schools in the use of such procedures.

20. Mr. NARANG (Indian Council of Education) said that children were among the most vulnerable victims of armed conflicts and were being forced to take up arms themselves in many parts of the world. In some countries, they were brainwashed by fundamentalist groups or even State-aided institutions into embarking on the path of extremism and intolerance.

21. The general support for a draft optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts was heartening, but many States were delaying its finalization by dwelling on issues such as the minimum age for participation in hostilities, the age of recruitment and child recruitment by non-governmental armed groups. He urged the working group on the draft optional protocol and the Sub-Commission to pay special attention to the five key areas identified by the Special Representative of the Secretary-General for children and armed conflict; namely, exertion of political pressure to ensure that international commitments were honoured; monitoring of compliance by States and insurgent groups with commitments not to use children under 18 years of age in their armed forces; ensuring that the briefing and public debate in the Security Council held in 1998 became an ongoing concern; ensuring that the fate of children who had been used in hostilities was discussed from the outset of peace negotiations; and ensuring that post-conflict programmes gave priority to the interests and needs of children.

22. He urged the Sub-Commission to use its moral authority to bring pressure to bear on States to finalize the draft optional protocol in the year 2000. The working group should also pay adequate attention to the issue of children being used by terrorist groups as messengers, carriers or shields and should formulate a plan of action for advocacy and dissemination of the new instrument.

23. Ms. DIOP (African Commission of Health and Human Rights Promoters) said that the recent death of two Guinean teenagers in the landing-gear of an aircraft bound for Europe illustrated the despair of African youth at the lack of educational and employment opportunities and of other basic needs, which were often subordinated to the goals of military expansion.

24. Over 120,000 African children, including some as young as 7, had recently been involved in military operations. In Uganda, street children had been forcibly recruited to fight in the Democratic Republic of the Congo. In Sierra Leone, the traditional Kamajor civil defence force had used children in major military operations and the Revolutionary United Front, the chief rebel group, had included large numbers of children among its fighters. Some girls were also forced to fight but most were subjected to physical and sexual abuse.

25. She called on all African States to ratify the African Charter on the Rights and Welfare of the Child, in addition to the United Nations Convention on the Rights of the Child, and to set the minimum age for recruitment into the armed forces at 18. They should also monitor civil defence forces, rebel groups and Governments that had used child soldiers in the past and work together with the United Nations Children's Fund (UNICEF), the United Nations Educational, Cultural and Scientific Organization (UNESCO) and the Economic Community of West African States (ECOWAS) to demobilize child soldiers and reintegrate them into civil society. She welcomed the decision taken at the recent Assembly of Heads of State and Government of the Organization of African Unity (OAU) to tackle the problem of child soldiers and the ECOWAS moratorium on small arms proliferation.

26. Cancellations of African debts to multilateral lending institutions and the Group of Seven major industrialized countries should stipulate that the funds saved were to be used to provide young people with access to schooling, adequate health services, job opportunities and a secure environment in which to live.

27. Mr. WARIKOO (Himalayan Research and Cultural Foundation) said that it was heartening to note the adoption, by the International Labour Organization (ILO) at its General Conference in June 1999, of the Worst Forms of Child Labour Convention, 1999 (No. 182). Lack of education and child labour went hand in hand and NGOs could play a role in providing working children with non-formal education.

28. In collaboration with ILO, the Foundation had organized a national seminar and workshop on child labour and rehabilitation, held at New Delhi on 30-31 July 1999, to explore ways of securing coordination between the various agencies to provide non-formal education and alleviate the economic problems associated with child labour. It was to be hoped that, with the cooperation of all the agencies concerned, his organization would be able to continue its work towards that end. However, the urgent need was to provide free and compulsory primary education to all children.

29. Mr. SAUTTER (Pax Romana) said that young people must be given access to all forms and levels of education if they were to play their full role in promoting social change. However, constrained by structural adjustment policies, Governments were placing less emphasis on the right of access to higher education based on merit guaranteed by the Universal Declaration of Human Rights, and were privatizing third-level education and charging fees. Young people's ability to fulfil their potential as agents for development was thus being impaired.

30. In Indonesia, the Islamic Republic of Iran, Mexico and elsewhere, young people were being denied freedom of association and thereby prevented from playing their role as human rights defenders. His organization urged the Sub-Commission to prepare a working document on the impact of globalization on young people's human rights; and to recommend that the Office of the High Commissioner for Human Rights (OHCHR) establish a focal point for youth and develop programmes aimed at enhancing young people's capacity to promote and defend human rights.

31. Mr. ACHOUR (Organisation tunisienne de l'éducation et de la famille) said that many traditional practices had been abolished and the protection of the family, women and children had been embodied in Tunisian law as early as 1956, measures that had been consolidated in more recent legislation. Globalization posed a particular threat to children's rights, which States still tended to regard as a purely domestic matter. ILO did not have adequate resources to supervise the implementation of its Minimum Age Convention, 1973 (No. 138). Furthermore, there was an increasing gap between the rights of children in rural and in urban areas, especially in Africa. African NGOs urged the High Commissioner for Human Rights to address that problem. International treaties and national legislation to protect children's rights must be respected, as the best way of investing in the future.

32. Ms. MARWAH (International Institute for Non-Aligned Studies) said that child poverty was increasing faster than adult poverty, and child mortality was also on the increase. The Human Development Report 1997 estimated that cancellation of the African countries' debts could save the lives of 21 million children by the year 2000 and provide 90 million girls and women with access to basic education. The Sub-Commission should impress upon States that school attendance had to be made compulsory at the primary and secondary levels; and government programmes aimed at economic development must be reviewed to ensure that children's interests and welfare were protected.

33. Mr. HERNANDEZ PULIDO (International Labour Organization (ILO)) said that, at its eighty-seventh session in June 1999, the International Labour Conference had adopted unanimously, the Worst Forms of Child Labour Convention, 1999 (No. 182) and its accompanying Recommendation (No. 190). The Convention applied to all persons under the age of 18, regardless of the age of majority in a country's domestic legislation. It provided that each ratifying State must take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency; enumerated the forms of child labour falling within the scope of the Convention; and called for specific action on the part of the ratifying States. Fuller details were to be found in the memorandum submitted to the Sub-Commission by his Organization (E/CN.4/Sub.2/1999/24). Recommendation No. 190 provided further guidance on the effective implementation of the Convention, calling for special attention to be given to the problem of hidden work situations, in which girls were at special risk.

34. The Director-General of ILO had launched a campaign for the ratification of the new Convention and a number of Governments had already embarked on the process. ILO was thus continuing its work in the area of child labour, an area in which its Minimum Age Convention, 1973 (No. 138) remained the

fundamental instrument. Lastly, ILO had implemented a major programme, the International Programme on the Elimination of Child Labour (ILO-IPEC), which encompassed a strong global partnership of 90 countries.

35. Mr. HUSSAIN (Observer for Iraq) said that, since ratifying the Convention on the Rights of the Child in 1994, Iraq had taken all the necessary legislative and legal steps to protect children and consolidate the stability of the family. A State-funded body, chaired by the Minister of Justice, had been established to draw up the general policy on the care and development of children and to determine the implementing authorities; and a National Plan of Action for children had been prepared for the period 1995-2000. A children's health-care project set up in 1996, in cooperation with UNICEF, had achieved significant results in lowering mother and child mortality rates and preventing disease.

36. The military aggression against Iraq in 1991 and the continuing comprehensive blockade had had a profound effect on children's psychological and social conditions. In 1991, Iraq's health care and education systems had almost matched those of the highly developed countries. According to the Human Development Report 1998, it ranked forty-fourth among the 77 poorest countries, and children were dropping out of school to contribute to the family income. The percentage of children born underweight had risen from 4.5 per cent in 1990 to 23.8 per cent in 1998, and the under-five mortality rate had risen from 48 per thousand in 1990 to 122 per thousand in 1997. The comprehensive blockade imposed on Iraq must be lifted so that its children's psychological and social needs could once again be met.

37. Mr. PARK Sang-yong said that, according to a recent ILO estimate, 250 million children between the ages of 5 and 14 were working part-time and about 120 million full-time, many of them in hazardous conditions, and the vast majority of them in developing countries. While child labour was a complex, multi-faceted phenomenon, its worst manifestations brooked no qualification: they must simply be stopped.

38. Some tangible efforts had already been made. A joint fund set up by the United States Government and Pakistani carpet makers the previous year would eventually target more than 300,000 children working as carpet weavers in Pakistan. Similar joint programmes could be established in other countries in the future. Such initiatives would contribute to the implementation of article 32 of the Convention on the Rights of the Child and article 2 of ILO Convention No. 138. The recent adoption of ILO Convention No. 182 constituted a further giant step in that regard.

39. As many as 300,000 children in at least 50 countries were estimated to be directly involved in conflicts around the world. In April 1999, a coalition of prominent NGOs had revealed that more than 120,000 children were being used in African wars. Some guerrilla forces were rounding up children as young as 8 years old, who were sexually abused, used as human shields or in mine clearance and suicide bombings, and often killed if they attempted to escape or if they were too tired or ill to perform the duties imposed on them.

40. According to a recent news report, civil wars and ethnic conflicts had claimed the lives of more than 2 million children, left 6 million maimed, created 1 million orphans and traumatized 10 million more over the last decade. Commission resolution 1999/80 and General Assembly resolution 53/128 were a response to that situation. The draft optional protocol to the Convention on the Rights of the Child, raising the minimum age of soldiers from 15 to 18, was due to be finalized in 1999; and the Statute of the International Criminal Court defined conscripting or enlisting children under the age of 15 or using them to participate actively in hostilities as a war crime.

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED:

(a) REVIEW OF DEVELOPMENTS CONCERNING RECOMMENDATIONS AND DECISIONS RELATING, INTER ALIA, TO:

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(i) ADVERSE CONSEQUENCES OF THE TRANSFER OF ARMS AND ILLICIT TRAFFICKING IN ARMS ON THE ENJOYMENT OF HUMAN RIGHTS;

(ii) ARBITRARY DEPRIVATION OF NATIONALITY

(agenda item 12) (E/CN.4/Sub.2/1999/23, 24, 26, 27, 28 and Corr.1, 29, 32, 34, 38 and 39; E/CN.4/Sub.2/1999/NGO/5)

41. Ms. KOUFA (Special Rapporteur on the question of terrorism and human rights), introducing her preliminary report (E/CN.4/Sub.2/1999/27), said that States were duty-bound by international law to refrain from organizing or assisting terrorist acts in another State. However, no consensus had been reached as to what types of acts constituted terrorism and what persons were terrorists. General Assembly resolutions on the subject, however, reflected an increasing resolve within the international community to condemn terrorism

and a growing awareness of the relationship between human rights and terrorism and the Vienna Declaration and Programme of Action had confirmed that terrorism was aimed at the destruction of human rights, fundamental freedoms and democracy.

42. In the second part of her report, she had explored the link between terrorism and human rights by considering the threat which terrorism posed to the life, liberty and dignity of the individual, to democratic society and to social peace and public order; had demonstrated that terrorism was totally at odds with the concept of democratic society and had considered the actual and potential threats to social peace and public order posed by terrorism.

43. She had then turned to the question of defining terrorism and the interrelated questions of the scope of application of international human rights law and of the accountability of the non-State actor. The main question was whether it might be valuable in a future report to try to explore some working definitions of "terrorism" or to elaborate on the specific acts that could be considered "acts of terrorism" for the purposes of the study.

44. Lastly, she had dealt with the controversial question of recent trends and developments in international terrorist activity such as the growth of a variety of terrorist groups and organizations with diversified motivations, funding mechanisms and strategies. In particular, she had discussed terrorist access to weapons of mass destruction and the rapid and the widespread increase of the illicit trade in small arms. She had also drawn attention to the recent rise and proliferation of religious or quasi-religious terrorist entities and to the vulnerability of society to cyber-terrorism.

45. Her concluding observations were to be found in paragraphs 55 to 64 of the report. She hoped that the Sub-Commission would see fit to adopt a resolution approving the suggestions contained therein.

46. Ms. HAMPSON, introducing her working paper on reservations to human rights treaties (E/CN.4/Sub.2/1999/28), said that some human rights treaties were more affected by reservations than others. The Convention on the Elimination of All Forms of Discrimination against Women was particularly badly affected. The Human Rights Committee had produced its General Comment No. 24 on issues relating to reservations to the International Covenant on Civil and Political Rights and its Protocols, a General Comment that had been endorsed by the chairpersons of the treaty bodies.

47. There were five principal issues which she had set out in the working paper, on the first four of which there appeared to be some measure of shared understanding. The final issue was more controversial, however: whether the monitoring body of a human rights treaty could determine the effects of a finding that a reservation was incompatible with the object and purposes of a treaty, and whether the monitoring body was free simply to sever the offending reservation. That was at the core of the dispute between the Human Rights Committee and the three States which had objected to its General Comment No. 24.

48. There was a need to review the actual reservations themselves, reservation by reservation, treaty by treaty and across the various treaty

texts and the Sub-Commission was well placed to carry out such a study, since one of its roles was to assist the treaty bodies. She therefore proposed that the Sub-Commission request the Commission to appoint a special rapporteur to carry out such a study. There would be financial implications, unless the resources could be found elsewhere, since the special rapporteur would need research assistance and might need to meet the chairpersons of the treaty bodies. He or she would also need the cooperation of the treaty bodies and of States and the assistance of NGOs in providing information.

49. Mr. RAMISHVILI, introducing, in the absence of Mr. Kartashkin, the working paper submitted by the latter on the observance of human rights by States not parties to United Nations human rights conventions (E/CN.4/Sub.2/1999/29), said that, despite repeated efforts from various quarters, there was still a fairly large number of States which were not parties to United Nations human rights conventions. Some conventions - such as the Convention on the Rights of the Child - had, of course, broader participation than others.

50. The thrust of the working paper was that the Sub-Commission should consider the possibility of establishing a mechanism to provide information to such States regarding the conventions, to analyse the reasons why they were not parties to them, and to provide any necessary technical, informational or other assistance to allow them to accede to them. Any such mechanism should complement rather than cut across the existing efforts of the treaty bodies themselves, and should not diminish State sovereignty.

51. In the absence of Mr. Kartashkin, it would be illogical to propose the adoption of a decision, but he hoped that the members of the Sub-Commission would agree with him that Mr. Kartashkin should be allowed to continue his study of the question and report to the Sub-Commission again at its next session.

52. Mr. FAN Guoxiang commended Ms. Koufa on her preliminary paper and expressed the hope that the Sub-Commission would support her further work on the complex and manifold aspects of terrorism in relation to human rights, which he was convinced she would bring to a successful conclusion.

53. He had found Ms. Hampson's working paper (E/CN.4/Sub.2/1999/28) extremely interesting. Reservations to human rights conventions had been among the topics discussed at a seminar held in China in October 1998 and attended by the Prime Minister of the United Kingdom. It was clearly a very important issue, and one about which there was considerable divergence of opinion. He did not share her view that human rights treaties were not distinct in character from other treaties into which States entered. A relevant example, as he saw it, was the various kinds of treaties and agreements relating to such matters as disarmament, trade or technical matters such as telecommunications and postal services. The issues dealt with in such treaties called for precise regulation, often expressed in monetary terms. They differed greatly from human rights treaties where conflict could arise with national interests, for example the right to self-determination, which called for flexibility of treatment, and where differences of interpretation could be registered by the making of reservations.

54. It had also to be borne in mind that the admissibility of reservations could encourage countries to accede to human rights treaties. As for Ms. Hampson's reference to article 19 of the Vienna Convention on the Law of Treaties (para. 8), he noted that a distinction was made between categories of provisions, of which there could be different interpretations, as was illustrated by the disagreement that had occurred over General Comment No. 24 of the Human Rights Committee. The existence of such controversies pointed to the need for further study of the question of reservations, for which purpose a special rapporteur should be appointed and provided with the necessary funding.

55. Mr. Kartashkin's working paper (E/CN.4/Sub.2/1999/29) presented an interesting survey of ways of promoting accessions to the international human rights instruments. As Mr. Ramishvili had pointed out, several possible means had been canvassed, such as appeals to the countries concerned, or the establishment of an inter-sessional or sessional working group to which parties that had not yet acceded could submit reports. He did not think that the time was yet ripe to set up a working group or groups. As for the Universal Declaration of Human Rights, it was important to bear in mind that it differed from the treaties, in that it was not legally binding. Perhaps decisions on those matters could be left until a later meeting.

56. Mr. GUISSÉ said that, although Ms. Koufa's preliminary report (E/CN.4/Sub.2/1999/27) contained much valuable and relevant information, it failed to answer a number of central questions. Conceptions of terrorism differed: some considered acts commonly so described as criminal, while others considered them necessary to achieve liberation from the yoke of repression. Before any generally acceptable definition could be arrived at, deeper study and extensive discussion would be required. It was possible that such a definition was unattainable, dependent as it was on identifying elements that everyone, in whatsoever situation, would accept as constituting terrorism. It seemed to him that hitherto terrorism had been to some extent a Western concept.

57. However that might be, given the complexity of the issues involved, it would be a mistake to go too fast. The report, when completed, could be no more than the opening phase of an international debate.

58. Among the other questions relating to terrorism that had to be settled was its field of application. When the term State terrorism was used, the question arose as to whether it meant terrorism directed against another State or against its own population. In every case, there was a victim requiring reparation for a wrong suffered. The Geneva Conventions laid down that the righting of any wrong was the responsibility of the State in whose territory the wrong was inflicted. There again the question arose whether it followed from that internationally accepted provision that private terrorism was the responsibility of the State in which it occurred. International law, like domestic law, must be based on precise legal concepts applicable in court, and not on mere hypotheses. The Special Rapporteur should be encouraged to work towards something more substantial, of a more strictly legal nature.

59. Turning to Ms. Hampson's working paper on reservations to human rights treaties (E/CN.4/Sub.2/1999/28), he said that it was necessary to recognize

that all such questions were linked to the basic principle of sovereignty. He regretted the prominence given in the working paper to graphs and statistics; they were not relevant to the formulation of international human rights law, which, being neither a normative nor an exact science, called for a philosophical and juridical approach.

60. As for the working paper on the observance of human rights by States not parties to United Nations human rights conventions (E/CN.4/Sub.2/1999/29), it was regrettable that its author, Mr. Kartashkin, was not present to introduce it and participate in its discussion. He suggested that further consideration of the paper should be suspended until it had been introduced in accordance with the established procedure.

61. Mr. KHALIL said that the Special Rapporteur's preliminary report on terrorism and human rights contained a wealth of information and analysis and she should be given every facility to complete her work. It confirmed the fact that terrorism was a worldwide phenomenon calling for a universal response and not, as had previously been thought, something local, responsibility for dealing with which fell upon the Governments of the regions concerned. It also rightly pointed out that the consequences of terrorism were not confined to the direct victims but could provoke reactions that themselves led to further violations of human rights as a result of overreaction on the part of the States affected. The Special Rapporteur also recognized the need for further study of the extremely difficult matter of the definition of terrorism, which had been touched upon by Mr. Guissé.

62. Another interesting aspect of her report was the warning it delivered about the relative ease with which terrorists could obtain small but sophisticated weapons, and the link between trafficking in such arms and other forms of organized crime such as the illicit traffic in drugs and money laundering.

63. She had also performed a valuable service in drawing attention to the gaps in legal systems resulting from the fact that non-State terrorism was not, strictly speaking, subject to the supervisory activities of international and human rights law - a point of particular importance at a time when transnational terrorism was increasingly in evidence.

64. Mr. BOSSUYT, congratulating Ms. Koufa on her preliminary report, said that terrorism and human rights was a controversial but highly important subject, further complicated by new and alarming developments. Ms. Koufa had very judiciously discussed the links between terrorism, individual freedom and dignity, democratic society and social peace and public order. As she rightly pointed out, terrorism not only violated the rights of its victims but also provoked serious breaches of human rights and freedoms when State authorities overreacted.

65. Terrorist acts were often intended to disrupt a peace process and, most discouragingly, often achieved their end, at least temporarily. He hoped that the Special Rapporteur would give further attention to the appropriate political reaction to terrorist acts.

66. Another difficult question was the definition of terrorism, since some people regarded every act of their opponents as terroristic and all those of their own side as legitimate. It was also necessary to distinguish between acts of terrorism according to who was responsible for them, whether States or groups and States. He hoped, however, that the Special Rapporteur would succeed in arriving at a definition that would at least find acceptance in the Sub-Commission. He noted that in her preliminary report (E/CN.4/Sub.2/1999/27, para. 39) she had already identified some key factors: arbitrariness, indiscriminateness in effects, non-recognition of any rules or conventions of war, inhumanity and barbaric cruelty.

67. Mr. JOINET said that Ms. Hampson was to be congratulated on her working paper, which went straight to the heart of the complex issues raised by reservations to human rights treaties. He did not agree with Mr. Guissé's criticisms of the inclusion of graphs and statistics which, annexed to the paper, served to put the issues in their context. The central issue concerned the authority or authorities competent to decide the validity of a reservation.

68. He thought that Ms. Hampson had been right to make a distinction between that question and the related but distinct question of the effects of a non-valid reservation. The existing situation regarding those issues in the United Nations was that the Human Rights Committee had, in its General Comment No. 24, pronounced itself competent to determine the validity of reservations. The Commission on Human Rights, however, had registered its complete disagreement with the Committee, its views coinciding with those of the United States of America, the United Kingdom and France.

69. On the other hand, the chairpersons of all the treaty bodies had come down on the side of the Human Rights Committee in a statement issued after their meeting at the end of the Vienna Conference. For its part, the International Law Commission had not so far expressed an opinion. He, personally, hoped that the Commission on Human Rights would take the matter up and arrange for studies that might contribute to the solution of those difficult problems and advance the cause of human rights.

The meeting rose at 1.05 p.m.